



Written by [Joe Wolverton, II, J.D.](#) on July 28, 2010

Fremont, Nebraska's Anti-Illegal Immigration Law Faces Legal Challenge

Fifty-seven percent of the 25,000 legal residents of Fremont, Nebraska, voted on June 21 to approve an ordinance aimed at identifying and eliminating the hiring of illegal aliens by local businesses and the renting of apartments to those living in the town without the proper immigration documents.

For a town of its size, Fremont is attracting lots of attention and it doesn't have anything to do with the \$5 million water park that is the pride of the city. It has everything to do with a state a thousand miles to the south — Arizona.



As most of the readers of [The New American](#) are aware, Arizona's anti-illegal immigration statute, S.B. 1070, is set to go into effect tomorrow, empowering local and state law enforcement to inquire into the immigration status of people already subject to an underlying lawful stop and reasonably suspected of being in the country in defiance of federal law.

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Fremont's new law, although patently distinct in many ways from S.B. 1070, was scheduled to go into effect on Thursday, as well. That isn't going to happen, though, as Tuesday the [town council voted to delay](#) implementation for 14 days after the U.S. District Court rules on separate motions filed by the American Civil Liberties Union (ACLU) and the Mexican American Legal Defense and Educational Fund (MALDEF) for an injunction prohibiting its implementation.

Predictably, the [ACLU](#) and MALDEF have filed for a [temporary restraining order](#) against the enforcement of the law asserting that it violates the civil rights of Hispanics that are the assumed target of the new ordinance.

Maria Archuleta, a spokeswoman for the ACLU, said the United Food and Commercial Workers Union, Local 22, has been added to the list of plaintiffs. The ACLU lawsuit, filed July 21, avers that the provisions of the law violate "the clear constitutional mandate imposing a uniform federal immigration enforcement system and has a discriminatory effect on those who look or sound 'foreign'."

Although it voted to delay the scheduled implementation of the popular new law, the town council of Fremont is not backing down from defending its right to discourage illegal immigration.

After a 12-minute executive session at Tuesday's meeting, members of the council voted unanimously to hire Kris Kobach to defend the voter-approved illegal immigration ordinance against two lawsuits filed last week. Kobach, a constitutional law professor at the University of Missouri at Kansas City, wrote Fremont's ordinance, as well as similar ordinances in other communities and states, including Arizona's S.B. 1070.



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Kobach believes the Fremont law will overcome the legal hurdles being placed in the path of enforcement. He cited the example of Valley Park, Mo., where a similar ruling was upheld by the Eighth Circuit Court of Appeals, which has jurisdiction over Fremont, as well.

As he said previously in defense of the Arizona legislature's passage of S.B. 1070, Kobach pointed to a lack of enforcement of immigration law on the federal level as the engine propelling the trend toward state and local governments promulgating their own ordinances to take up the slack. "When the federal government is not adequately enforcing the immigration laws, the cost of non-enforcement usually — predominantly falls at the city and state level," Kobach told ABC News. In the interview, Kobach referred to a 2007 study by the [Heritage Foundation](#), which calculated that the fiscal deficit of illegal immigrants totaled \$89.1 billion. "It's that cost that drives the cities and states to act. They bear the ultimate burden for the failure to enforce our immigration laws," said Kobach.

In that regard, tiny Fremont, Nebraska, situated on the Platte River nearly 2,000 miles from the border with Mexico, is surprisingly similar to Arizona. The city managers are frustrated by federal lassitude and all-around failure to execute laws already on the books and designed to prevent and punish illegal immigration.

There are differences, however. "What's happening here in Fremont, Nebraska, is really very different from what's happening in Arizona," said city manager, Robert Hartwig. "I think the voters here have looked down the road and they don't see the federal government effectively dealing with illegal immigration. We are a small city of 25,000 with great quality of life including good schools and quality health care. I think the voters want to make sure that it stays that way."

City Council President Scott Getzschman added his opinion, "Given the size of our city, we will make a decision based on the best interest of the citizens of Fremont. As we evaluate legal challenges ahead, we need to look at our resources carefully," Getzschman said.

Accordingly, the city has established a website for residents who want to donate to its defense fund, much like the one set up by Arizona Governor Jan Brewer for the same purpose.

There is a chance that the ACLU and MALDEF challenges (as well as others sure to follow) will successfully thwart the legislative intent of the citizens of Fremont. Ordinances of similar scope and effect were passed in Hazelton, Pennsylvania, and Farmers Branch, Texas, but they were later struck down by the courts. And, an article published in the *Atlanta Journal-Constitution* reports that an anti-illegal immigration law in Cherokee County, Georgia, is withering in legal limbo three years after being approved.

As for the specifics of the provisions of the law that have drawn so much publicity and so much ire from the usual claque of civil rights "defenders," they are rather simple. According to the law, anyone trying to rent an apartment in the city limits would have to apply for a license, approval of which would require a police check of the applicant's legal status. Any applicant found to be illegally present in the state would be reported to the appropriate federal agency.

Additionally, the law mandates that city businesses be required to ascertain the legal immigration status of all employees using the federal E-verify database. Any company found guilty of violating the requirement would be penalized.

As with any law, there are loopholes through which wily lawbreakers will pass. For example, in Fremont, many of the immigrants work at meatpacking plants. Unfortunately, most of these plants lie outside the city limits and thus outside the jurisdiction of the new law, leaving them free to continue to



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hire those without legal permission to work in this country.

A judge in the U.S. District Court for the District of Nebraska is scheduled to rule later today on the [motions filed last by the ACLU](#) and MALDEF. The citizens of Fremont will be waiting with great interest for the judge's decision. In light of today's ruling enjoining key provisions of S. B. 1070, the proponents of the Fremont ordinance may be looking at a prolonged legal battle.

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